

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA §
§
v. § CRIMINAL NO. 6:03-CR-00044-1
§
WESLEY KYLE CROCKER §

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On December 17, 2010, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant, Wesley Kyle Crocker. The government was represented by Jim Noble, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by federal public defender, Ken Hawk.

Defendant originally pleaded guilty to the offense of Possession of a Firearm During a Drug Trafficking Offense, a Class A felony. The offense carried a statutory maximum imprisonment term of 5 years. The United States Sentencing Guideline range, based on a criminal history category of IV, was 60 months. On February 6, 2004, District Court Judge Leonard Davis of the Eastern District of Texas sentenced Defendant to 60 months imprisonment followed by a four-year term of supervised release, subject to the standard conditions of release, plus special conditions to include drug testing and treatment. On December 7, 2008, Defendant completed his period of imprisonment and began service of the supervision term.

On August 28, 2009, Defendant was convicted of the offense of Driving While Intoxicated and Open Alcohol Container in Cause No. 003-83808-09 in County Court at Law #3, Smith County, Texas. He was placed on community supervision for a two-year period. On August 12, 2010, this community supervision was revoked after he was arrested on June 15, 2010 for Unlawful Possession

of Firearm by Felon and Possession of a Controlled Substance. Defendant was sentenced to pay a fine and serve 180 days in Smith County jail.

In its petition, the government alleges that Defendant violated his conditions of supervised release by the August 12, 2010, order revoking community supervision in Cause No. 003-82802-09 in County Court Law #3, Smith County, Texas; failure to provide a monthly report and proof of employment for May 2010; and failure to notify his supervising officer of the June 15, 2010, arrest within 72 hours, a grade C violation.

If the Court finds by a preponderance of the evidence that Defendant committed this violation, a statutory sentence of no more than 5 years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Violating a condition of supervision by committing a Grade C violation allows the Court to revoke probation or supervised release. U.S.S.G. § 7B3.1(a)(2). Considering Defendant's criminal history category of IV, the Guideline imprisonment range is 6 to 12 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by committing the acts as alleged in the government's petition. The parties agreed on the appropriate sentence of 8 months.

Pursuant to the Sentencing Reform Act of 1984 and the agreement of the parties, the Court **RECOMMENDS** that Defendant, Wesley Kyle Crocker, be committed to the custody of the Bureau of Prisons for a term of imprisonment of 8 months with no supervised release to follow.

The parties have waived their right to object to the finding of the Magistrate Judge in this matter so this Report and Recommendation will be presented to District Judge Leonard Davis for

adoption immediately upon issuance.

So ORDERED and SIGNED this 20th day of December, 2010.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE